

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ARIC MICHAEL MCGINN,

Defendant.

No. 06-CR-4090-DEO

ORDER

I. INTRODUCTION AND BACKGROUND

This matter is before the Court pursuant to "Report and Recommendation On Petition To Revoke Supervised Release" (Docket No. 38, 01-23-2009) issued by Chief United States Magistrate Judge Paul A. Zoss.

The report and recommendation sets out an introduction and states the findings of fact relevant to this case. While these portions will not be repeated, each is referenced and incorporated as if fully set out herein.

The report and recommendation sets out an analysis portion beginning on page 3. At page 9, it states in part:

G. Recommendation

Upon consideration of all of the above factors, the court finds McGinn would benefit from immediate placement in the halfway house in Council Bluffs, Iowa. The added difficulty and expense of supervising

McGinn in that location are not appropriate factors for consideration in determining whether McGinn's term of supervised release should be modified or revoked. USPO Dodge has advised that McGinn likely could be placed in the Council Bluffs halfway house relatively soon, whereas he would have to wait six months or more for placement in a halfway house in the Northern District of Iowa. The undersigned therefore recommends McGinn's term of supervised release be modified to provide for his placement as soon as possible in the Council Bluffs halfway house, and that he remain in the halfway house for a period of six months.

II. ANALYSIS

A. Standard of Review

Pursuant to statute, this Court's standard of review for a magistrate judge's Report and Recommendation is as follows:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [judge].

28 U.S.C. § 636(b)(1). Similarly, Federal Rule of Civil Procedure 72(b) provides for review of a magistrate judge's Report and Recommendation on dispositive motions and prisoner petitions, where objections are made as follows:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommendation decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b).

III. CONCLUSION

Chief United States Magistrate Judge Paul A. Zoss concluded the report and recommendation as follows:

IV. CONCLUSION

Based upon the foregoing analysis, IT IS RESPECTFULLY RECOMMENDED, unless any party files objections to this Report and Recommendation, that the Government's motion to revoke McGinn's supervised release be denied, and McGinn's term of supervised release be extended¹ and modified as forth above. (Footnote omitted).

Further, the report and recommendation sets forth January 30, 2009, as the deadline for filing objections to the report

¹This Court notes that on page 9 of the Report and Recommendation, in the second full paragraph, it states that the period of supervised release may not be extended because Defendant McGinn has already been sentenced to the maximum authorized term of supervised release.

and recommendation.

No objections have been filed, and it appears to the Court upon review of Chief Magistrate Judge Zoss's findings and conclusions that there are no grounds to reject or modify them.


IT IS THEREFORE HEREBY ORDERED that this Court **accepts** Chief Magistrate Judge Zoss's Report and Recommendation (Docket No. 38).

IT IS FURTHER HEREBY ORDERED that the Government's petition to revoke is **denied**.

IT IS FURTHER HEREBY ORDERED that defendant Aric Michael McGinn's term of supervised release is hereby modified to allow for immediate placement in the Council Bluffs halfway house for a period of six months.

The United States Probation Office shall prepare the necessary paperwork to effectuate the rulings in this Order.

IT IS SO ORDERED this 9th day of February, 2009.


Donald E. O'Brien, Senior Judge
United States District Court
Northern District of Iowa